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ARTICLES

Challenges for Regulatory Reform in the Finance Sector: Learnings from the Last Decade – *Alice Klettner*

Over the last decade the finance sector has undergone significant scrutiny both globally and locally. Following the Global Financial Crisis, the G20 led a process of regulatory reform that had an impact internationally; however, the effectiveness of many of these reforms remains debatable. Scholarly experts have reviewed, assessed and critiqued the reform efforts yet this work is rarely used to inform new policy regimes. This article presents a systematic review of the academic literature on post-financial crisis regulatory reform with the aim of drawing out lessons for the future. It finds that financial regulation faces challenges at three levels: (1) at a structural or architectural level in terms of who regulates what; (2) at a processual level in terms of the style and mechanism of regulation; and (3) at the level of regulatory content, that is, the details of the rules or standards. In addition, regulatory effectiveness can be facilitated or hindered by: power and politics; blurred boundaries; and incorrect assumptions about behaviour. The article discusses these findings in the context of recent evidence of misbehaviour in the Australian finance sector. 151

Rights in Collateral under the PPSA: Rebutting the Minimalist Approach – *Craig Wappett and Anthony Duggan*

The generally accepted view in all PPSA jurisdictions is that, for the purposes of the Act, title retention arrangements are to be treated as if the seller had sold the goods outright to the buyer on credit terms with the buyer giving the seller a security interest in the goods to secure payment. A similar analysis applies for leases that are in-substance security interests. On the same basis, a lease, consignment or transfer of accounts or chattel paper which does not in substance secure payment or performance of an obligation but to which the PPSA applies by virtue of s 12(3) is to be treated for the purposes of the Act as if the transaction were in substance a security agreement. This means that in the case of a lease or consignment, the lessee or consignee is deemed to own the goods with the lessor or consignor having only a security interest, while in the case of an outright transfer of accounts, the transferor is deemed to have retained ownership with the transferee having only a security interest. In a series of recent articles (the "Minimalist Articles"), the correctness of this approach has been disputed with the view being advanced that transactions should not be recharacterised for the purposes of the Act. In this article, we defend the recharacterisation approach (the "unitary model") and identify the main weaknesses in the alternative approach the Minimalist Articles propose. 169

The Evolution and Consolidation of External Dispute Resolution Schemes in the Financial Sector: From the Banking Ombudsman to the Australian Financial Complaints Authority – *Ian Ramsay and Miranda Webster*

The Australian Banking Industry Ombudsman (ABIO) was the first external dispute resolution (EDR) scheme set up and funded by industry members at a national level in Australia. It came into operation in 1990. The ABIO was a significant first step in the development of EDR schemes to resolve disputes between financial service providers and consumers. At one stage there were seven different industry-funded EDR schemes in existence in the financial sector. However, the existence of multiple schemes proved to be problematic. Several of the EDR schemes merged in 2008 to create the Financial Ombudsman Service (FOS), and in November 2018, FOS, the Credit and Investments Ombudsman and the Superannuation Complaints Tribunal were replaced by a single body, the Australian Financial Complaints Authority. This article examines the establishment of the ABIO, outlines the expansion of industry-established EDR schemes operating in the financial sector, and then considers the arguments for the consolidation of the schemes. 182

BANKING LAW AND BANKING PRACTICE – *Editors: Dr Alan L Tyree and Mr John Sheahan QC*

Blockchain III: The Immutability Problem – *Alan L Tyree* 199

INSOLVENCY LAW AND MANAGEMENT – *Editors: Lindsay Powers, Gerard Breen and David Brown*

Reconciling Trading Trusts with Insolvency Law: The High Court's Solution – *Lindsay Powers* 202

NEW ZEALAND – *Editors: Ross Pennington, David Craig, Guy Lethbridge and Simon Jensen*

The Nature of a Security Interest: Hamersley v Forge – A Missed Opportunity? – *Steve Flynn* 207

TOKYO – *Editor: Masahiro Ueno*

Priority between Joto Tanpo and Retention of Title – *Masahiro Ueno* 213